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U.S. Tariff Commission

Rules of practice and procedure in...

Washington

1930

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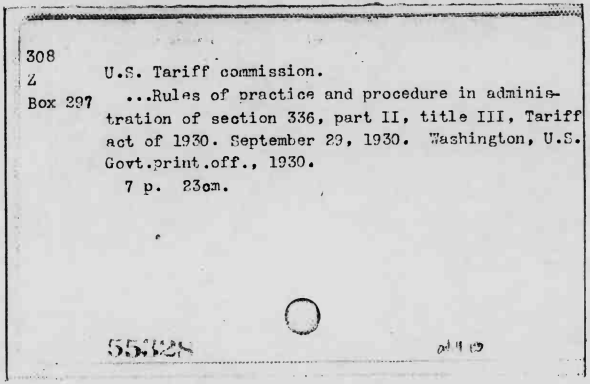

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UNITED STATES TARIFF COMMISSION
WASHINGTON, D. C.

RULES OF PRACTICE AND PROCEDURE

IN ADMINISTRATION OF SECTION 336 PART II, TITLE III TARIFF ACT OF 1930

SEPTEMBER 29, 1930

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UNITED STATES TARIFF COMMISSION

RULES OF PRACTICE AND PROCEDURE

IN ADMINISTRATION OF SECTION 336 PART II, TITLE III TARIFF ACT OF 1930

SEPTEMBER 29, 1930

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1930

For sale by the Superintendent of Documents, Washington, D. C. - - - - - Price 5 cents

UNITED STATES TARIFF COMMISSION

HENRY P. FLETCHER, Chairman
THOMAS WALKER PAGE, Vice Chairman
JOHN LEE COULTER
EDGAR B. BROSSARD
ALFRED P. DENNIS
LINCOLN DIXON

Address all Communications
UNITED STATES TARIFF COMMISSION
WASHINGTON, D. C.

RULES OF PRACTICE AND PROCEDURE

The principal office of the commission at Washington, D. C., is open each business day from 9 a. m. to 4.30 p. m. The commission may meet and exercise all its powers at any other place, and may designate one or more of its members to hold hearings or to prosecute any inquiry necessary to its duties. A majority of the commissioners in office shall constitute a quorum of the commission.

APPLICATIONS

Applications for investigation should be in the following form:

APPLICATION FOR INVESTIGATION

(By the United States Tariff Commission for the purposes of section 336 of Title III of the tariff act of 1930)

---, 193—.

UNITED STATES TARIFF COMMISSION,
Washington, D. C.

SIRS: Application is hereby made by the undersigned for an investigation, for the purposes of section 336 of the tariff act of 1930, of the following items dutiable under paragraph(s) ---- of said act:

It is believed that the duty fixed in the said paragraph(s) is more / less than is necessary to equalize the differences in costs of production of said article(s) in the United States and in the principal competing country and that said rate(s) should therefore be increased / decreased or that the rate(s) involved should be properly adjusted (including any changes in classification).

The undersigned is prepared to furnish for the assistance of the commission all information in his possession and believes that the investigation requested is feasible and necessary for the following reasons:

(Insert here facts showing necessity for adjustment of rate(s) or change of classification)

The applicant requests that the information herewith separately submitted and marked *confidential* be held in confidence for the information of the Commission only.

Respectfully,
(Signature of applicant)----------
By----------
Address----------

Nature of information to accompany application.—The applicant for an investigation should file with his application all information available to him which he believes to be pertinent. Information of the character indicated below will be especially helpful.

1. Comparability of the domestic and foreign article(s) and the degree of competition between them.

2. Tendency of domestic production and sales, whether upward or downward, and the tendency of imports.
3. Tendency of cost of production and prices in recent years.
4. Evidence of difference between foreign and domestic costs of production of the article(s) involved.
5. Areas of greatest competition between the imported and domestic products and the principal market or markets in the United States.
6. Transportation costs and other costs incident to delivery of the article(s) to the principal market or markets of the United States and/or other relevant factors that constitute, in the opinion of the applicant, an advantage or disadvantage in competition.
7. Any other information which the applicant believes the commission should consider.

ACTION BY THE COMMISSION UPON RECEIPT OF APPLICATION

Receipt of an application for investigation, for the purposes of section 336 of Title III of the tariff act of 1930, will be acknowledged by the secretary of the commission and public notice will be given of the application by posting at the principal office of the commission in Washington, D. C., and at its office in New York City, and by publication in Treasury Decisions published by the Department of the Treasury, and in the weekly edition of Commerce Reports published by the Department of Commerce. This public notice will set forth the date of the receipt of the application, the name of the applicant and the purpose of the application. Similarly, notice will be given of applications withdrawn. As soon thereafter as its other duties permit, the commission will notify the applicant of its decision either to order or not to order the investigation requested.

In reaching its decision the commission will take into consideration the information furnished by the applicant, the information assembled by its staff, and other information furnished by individuals or corporations either in favor of or opposed to the institution of the investigation.

PUBLIC NOTICE OF INVESTIGATION

Public notice shall be given of every investigation ordered by the commission by posting a copy of the order at the principal office of the commission in Washington, D. C., and at its office in New York City, and by publishing a copy thereof for two successive weeks in Treasury Decisions, and in the weekly edition of Commerce Reports.

PUBLIC HEARING

Reasonable public notice will be given of the time and place set for all hearings in the same manner as notice is given of an order instituting an investigation.

Without excluding other factors and with a view to assisting interested parties in preparing for the hearing, the commission will expect attention to be concentrated upon—

Facts which should be considered in appraising the competitive strength in the markets of the United States of the foreign and domestic articles.

Facts bearing upon the degree of likeness or similarity as between grades, classes, and price groups of the American products and the imported article.

Any direct evidence as to comparative unit costs will constitute one of the main problems to be considered, but bare factory costs consisting of an estimate of outlay for raw materials, wages paid, and other direct charges incident to processes of production will not entirely suffice. Secondary costs, such as depreciation, depletion, charges for rent, interest on investments, cost of containers, transportation charges, insurance, and general expenses, must all be reckoned into the cost equation.

Additional factors are—

Principal competing country.
Principal American market or markets.
Representative period of time for cost inquiry.
The extent to which invoice or wholesale prices are reliable evidence of foreign costs.
Any other evidence of unit production costs, both foreign and domestic.
Domestic areas or producing units to be selected as being competitive with the imported article.
Other significant advantages or disadvantages in competition.

Finally, parties interested appearing at public hearings are expected to present definite and affirmative information rather than generalities and conjectures.

APPEARANCES

Any person showing to the satisfaction of the commission an interest in the subject matter of an investigation may enter an appearance in such investigation, either in person or by representative, at any time before close of the public hearing relating to the matter involved.

Request to enter appearance shall be filed in writing with the secretary of the commission at its office in Washington, D. C.

CONDUCT OF PUBLIC HEARINGS

Parties who have entered an appearance in an investigation, either in person or by representative, may offer such evidence at a hearing relative to the matter involved, as is necessary for a full presentation of the facts.

Witnesses will be sworn. No documentary evidence will be accepted unless verified under oath by the person offering the same to be a true statement of the facts contained therein.

After offering evidence, witnesses may be questioned under the direction and control of the commission by any member of the commission or by any agent designated by the commission and by any person who has entered an appearance, for the purpose of assisting the commission in obtaining the material facts with respect to the subject matter of the investigation.

ADDENDUM

Insert on page 2, under "Action by the Commission upon Receipt of Application" paragraph 1, line 11, after the word "withdrawn", the following:

> Application may be withdrawn as a matter of course at any time before investigation has been ordered by the Commission, but the Commission may proceed with an investigation in any case if, in its judgment, the public interest so demands, whether or not an application shall have been withdrawn. The Commission may also, in special cases and for adequate cause, allow the withdrawal of an application after investigation has been ordered.

Evidence, oral or written, submitted in hearings, shall upon the order of the commission be subject to verification from the books, papers, and records of the parties interested and from any other available sources of information.

All hearings shall be stenographically reported. Copies of the transcript of the minutes of such hearings may be purchased from the official reporter by parties interested.

Summation of facts and evidence by parties appearing at the hearing may be presented to the commission. Unless otherwise ordered, these will be expected to be presented within five days after the close of the hearing.

Motions or requests for postponement of a hearing shall be filed with the commission not later than 10 days prior to the date set for such hearing and shall set forth fully the reasons therefor.

The commission may continue any hearing or order such rehearing as it may deem necessary for a full presentation of the facts involved in any investigation.

WITNESSES AND SUBPŒNAS

Unless otherwise ordered by the commission, witnesses shall be examined orally.

The attendance of witnesses and the production of documentary evidence may be required from any place in the United States at any designated place of hearing.

Any member of the commission may sign subpœnas, and members and agents of the commission, when authorized by the commission, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

DEPOSITIONS

The commission may order testimony to be taken by deposition at any stage of any investigation. Depositions may be taken before any person having power to administer oaths and designated by the commission. Such testimony shall be reduced to writing by the person taking the deposition or under his direction and shall then be subscribed by the deponent and certified in the usual manner by the person taking the deposition. After the deposition has been so certified it shall, together with a copy thereof made by such person or under his direction, be forwarded under seal to the secretary of the commission at its office in Washington, D. C., and shall constitute a part of the record in such investigation.

Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission.

ORAL ARGUMENT

Oral argument may in the discretion of the commission be heard upon the conclusion of the testimony in a hearing. The commission will determine in each instance the length of time to be allowed for argument and the allocation thereof to the respective parties interested.

WITNESS FEES AND MILEAGE

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking them, except employees of the commission, shall severally be entitled to the same fees and mileage as are paid for like service in the courts of the United States.

COMMISSIONERS SITTING AT HEARINGS

Hearings may be conducted by one or more commissioners and the record shall be presented for the consideration of the commission.

CONFIDENTIAL INFORMATION

As is provided in section 335 of Part II of Title III of the tariff act of 1930, it shall be unlawful for any member of the commission, or for any employee, agent, or clerk of the commission, or any other officer or employee of the United States, to divulge, or to make known in any manner whatever not provided for by law, to any person, the trade secrets or processes of any person, firm, copartnership, corporation, or association embraced in any examination or investigation conducted by the commission, or by order of the commission, or by order of any member thereof. Any offense against the provisions of this section shall be a misdemeanor and be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both, in the discretion of the court, and such offender shall also be dismissed from office or discharged from employment.

SECTION 336, TARIFF ACT OF 1930

For convenience of parties interested, section 336 of Title III of the tariff act of 1930 is quoted as follows:

SEC. 336. EQUALIZATION OF COSTS OF PRODUCTION.—(a) *Change of classification or duties.*—In order to put into force and effect the policy of Congress by this act intended, the commission (1) upon request of the President, or (2) upon resolution of either or both Houses of Congress, or (3) upon its own motion, or (4) when in the judgment of the commission there is good and sufficient reason therefor, upon application of any interested party, shall investigate the differences in the costs of production of any domestic article and of any like or similar foreign article. In the course of the investigation the commission shall hold hearings and give reasonable public notice thereof, and shall afford reasonable opportunity for parties interested to be present, to produce evidence, and to be heard at such hearings. The commission is authorized to adopt such reasonable procedure and rules and regulations as it deems necessary to execute its functions under this section. The commission shall report to the President the results of the investigation and its findings with respect to such differences in costs of production. If the commission finds it shown by the investigation that the duties expressly fixed by statute do not equalize the differences in the costs of production of the domestic article and the like or similar foreign article when produced in the principal competing country, the commission shall specify in its report such increases or decreases in rates of duty expressly fixed by statute (including any necessary change in classification) as it finds shown by the investigation to be necessary to equalize such differences. In no case shall the total increase or decrease of such rates of duty exceed 50 per centum of the rates expressly fixed by statute.

(b) *Change to American selling price.*—If the commission finds upon any such investigation that such differences can not be equalized by proceeding as hereinbefore provided, it shall so state in its report to the President and shall specify therein such ad valorem rates of duty based upon the American selling price (as defined in section 402 (g)) of the domestic article, as it finds shown

by the investigation to be necessary to equalize such differences. In no case shall the total decrease of such rates of duty exceed 50 per centum of the rates expressly fixed by statute, and no such rate shall be increased.

(c) *Proclamation by the President.*—The President shall by proclamation approve the rates of duty and changes in classification and in basis of value specified in any report of the commission under this section, if in his judgment such rates of duty and changes are shown by such investigation of the commission to be necessary to equalize such differences in costs of production.

(d) *Effective date of rates and changes.*—Commencing thirty days after the date of any presidential proclamation of approval the increased or decreased rates of duty and changes in classification or in basis of value specified in the report of the commission shall take effect.

(e) *Ascertainment of differences in costs of production.*—In ascertaining under this section the differences in costs of production, the commission shall take into consideration, in so far as it finds it practicable:

(1) *In the case of a domestic article.*—(A) The cost of production as hereinafter in this section defined; (B) transportation costs and other costs incident to delivery to the principal market or markets of the United States for the article; and (C) other relevant factors that constitute an advantage or disadvantage in competition.

(2) *In the case of a foreign article.*—(A) The cost of production as hereinafter in this section defined, or, if the commission finds that such cost is not readily ascertainable, the commission may accept as evidence thereof, or as supplemental thereto, the weighted average of the invoice prices or values for a representative period and/or the average wholesale selling price for a representative period (which price shall be that at which the article is freely offered for sale to all purchasers in the principal market or markets of the principal competing country or countries in the ordinary course of trade and in the usual wholesale quantities in such market or markets); (B) transportation costs and other costs incident to delivery to the principal market or markets of the United States for the article; (C) other relevant factors that constitute an advantage or disadvantage in competition, including advantages granted to the foreign producers by a government, person, partnership, corporation, or association in a foreign country.

(f) *Modification of changes in duty.*—Any increased or decreased rate of duty or change in classification or in basis of value which has taken effect as above provided may be modified or terminated in the same manner and subject to the same conditions and limitations (including time of taking effect) as is provided in this section in the case of original increases, decreases, or changes.

(g) *Prohibition against transfers from the free list to the dutiable list or from the dutiable list to the free list.*—Nothing in this section shall be construed to authorize a transfer of an article from the dutiable list to the free list or from the free list to the dutiable list, nor a change in form of duty. Whenever it is provided in any paragraph of Title I of this Act, or in any amendatory Act, that the duty or duties shall not exceed a specified ad valorem rate upon the articles provided for in such paragraph, no rate determined under the provisions of this section upon such articles shall exceed the maximum ad valorem rate so specified.

(h) *Definitions.*—For the purpose of this section—

(1) The term "domestic article" means an article wholly or in part the growth or product of the United States; and the term "foreign article" means an article wholly or in part the growth or product of a foreign country.

(2) The term "United States" includes the several States and Territories and the District of Columbia.

(3) The term "foreign country" means any empire, country, dominion, colony, or protectorate, or any subdivision or subdivisions thereof (other than the United States and its possessions).

(4) The term "cost of production", when applied with respect to either a domestic article or a foreign article, includes, for a period which is representative of conditions in production of the article: (A) The price or cost of materials, labor costs, and other direct charges incurred in the production of the article and in the processes or methods employed in its production; (B) the usual general expenses, including charges for depreciation or depletion which are representative of the equipment and property employed in the production of the article and charges for rent or interest which are representative of the cost of obtaining capital or instruments of production; and (C) the cost of containers and coverings of whatever nature, and other costs, charges, and expenses incident to placing the article in condition packed ready for the delivery.

(i) *Rules and regulations of President.*—The President is authorized to make all needful rules and regulations for carrying out his functions under the provisions of this section.

(j) *Rules and regulations of Secretary of Treasury.*—The Secretary of the Treasury is authorized to make such rules and regulations as he may deem necessary for the entry and declaration of foreign articles of the class or kind of articles with respect to which a change in basis of value has been made under the provisions of subdivision (b) of this section, and for the form of invoice required at time of entry.

(k) *Investigations prior to enactment of act.*—All uncompleted investigations instituted prior to the approval of this act under the provisions of section 315 of the tariff act of 1922, including investigations in which the President has not proclaimed changes in classification or in basis of value or increases or decreases in rates of duty, shall be dismissed without prejudice; but the information and evidence secured by the commission in any such investigation may be given due consideration in any investigation instituted under the provisions of this section.

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END OF
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